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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|---------------------|
| 10/748,434 | 12/30/2003 | Tomohisa Honda | CU-3529 RJS | 8115 |
| 26530 | 7590 | 06/12/2006 | EXAMINER | |
| LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604 | | | | SCHECHTER, ANDREW M |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2871 | |

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

HJD

| | | |
|---|--------------------------------------|-------------------------------------|
| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/748,434 | Applicant(s) HONDA ET AL. |
| | Examiner Andrew Schechter | Art Unit 2871 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) The period for reply expires 3 months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. Applicant's reply has overcome the following rejection(s): _____.
 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 2,5,7 and 8.

Claim(s) objected to: 3 and 6.

Claim(s) rejected: 1 and 4.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. Other: _____.

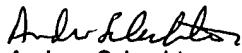
Continuation of 11. does NOT place the application in condition for allowance because:

The applicant argues [pp. 3-4] that Hiroshima does not disclose that the height from the substrate to the top of columnar spacer SP1 in the pixel part is higher than the height from the substrate to the top of the columnar spacer SP2 in the peripheral part. Specifically, the applicant first argues that the comment from paragraph 0025 that the "clearance" between the SP1 and the SUB1 is smaller than the clearance between SP2 and SUB1 does not mean that it has the recited heights; there are other layers (orientation layers and TFTs) on the SUB1 in the area of the SP1 but not the SP2 which might account for the different clearances. This is not persuasive. As can be seen in the Fig. 1, the orientation layer [ORI1] extends under the SP1 and under some of the SP2, and as is made clear in paragraph [0051], the "clearance" difference is indeed caused by the thickness of the ITO2, not by the features on the other substrate varying. The applicant then also argues (essentially) that Fig. 1 is not necessarily drawn to scale and therefore cannot be relied on to disclose the recited limitation. This is not persuasive. As can be seen from paragraph [0051], Hiroshima deliberately draws this feature of the drawing to represent the invention: the tops of SP2 are not brought into contact with the other substrate, while the tops of SP1 are. The figure therefore is explicitly drawn to emphasize that the device meets the claim limitation that the height of SP1 is higher than the height of SP2. (The height difference is the thickness of ITO2, which is "extremely thin"; this nonetheless meets the recited claim language.)

The applicant argues [p. 4] that Hiroshima's Fig. 2 shows spacers which do not meet the recited claim limitations, and states that this is a preferred embodiment of Hiroshima, so Hiroshima should not be used against the present claims. This is not persuasive. Hiroshima's Fig. 2 is not relevant to the present claims or the present rejection; Hiroshima's Fig. 1 is a preferred embodiment which does meet the recited claim limitations and is relevant to the present claims.

The applicant argues [p. 5] that the height of spacer SP1 is higher than that of SP2 (this appears to concede the point discussed above) only "accidentally". This is not persuasive. Hiroshima creates a leveled overcoat surface and intentionally creates spacers of different heights on it.

The applicant argues [p. 6] that Kim's invention is not related to the problem which is solved by the present invention. This is not relevant. Kim, modified by Okamoto as discussed in the rejection, meets the present claim language, so claims 1 and 4 are upatentable over Kim in view of Okamoto.


Andrew Schechter
Primary Examiner
Technology Center 2800
30 May 2006